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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,497	01/18/2002	Rong-Hwa Lin	A0871.70000US01	1774

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EXAMINER	
GAMBEL, PHILLIP	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/051,497	Applicant(s) LIN ET AL.	
	Examiner Phillip Gambel	Art Unit 1644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-9,11-13,17,19,20,22-25 and 38 is/are pending in the application.
- 4a) Of the above claim(s) 7-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6,11-13,17,19,20,22-25 and 38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/ are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

ACKNOWLEDGEMENT STATEMENT

DETAILED ACTION

1. Applicant's amendment, filed 10/24/2007, has been entered.

Claims 1, 3, 4, 11, 12, 17, 19, 20, 22-25 and 38 have been amended.

Claim 10 has been canceled.

Claims 2, 5, 14-16, 18, 21, and 26-37 have been canceled previously.

Claims 1, 3, 4, 6-9, 11-13, 17, 19, 20, 22-25 and 38 are pending.

As pointed out previously, applicant's election of species (B), drawn to methods using an anti-PSGL-1 antibody and an agent that binds to the antibody and induces the cross-linking of a plurality of PSGL-1 antigens on the cell surface without traverse in the Reply, filed 07/22/2004, and the species autoimmune disease and type I diabetes in the Reply, filed 03/10/2004, has been acknowledged.

Claims 1, 3, 4, 6, 11-13, 17, 19, 20, 22-25 and 38 are under consideration in the instant application.

Claims 7-9 have been withdrawn from consideration by the examiner 37 CFR 1.142(b), as being drawn to a nonelected invention or species.

2. The text of those sections of Title 35 USC not included in this Action can be found in a prior Office Action.

This Action will be in response to applicant's amendment, filed 10/24/2007.

The rejections of record can be found in the previous Office Action.

3. Priority.

Applicant submits that the applicant has previously addressed this issue and respectfully disagrees, but acknowledges the examiner's argument of record.

The following is reiterated for applicant's convenience.

As indicated previously, the filing date of the instant claims is deemed to be the filing date of the instant application USSN 10/051,497, filed 01/18/2002;
as the previous provisional priority application USSN 60/310,196, filed 08/03/2001, does not appear to provide sufficient written description for the claimed "limitations".

Applicant's assertions, filed 02/01/2007, concerning the priority of the instant invention back to priority USSN 60/310,196, filed 8/3/01, are acknowledged.

Applicant's arguments and the examiner's rebuttal are essentially the same of record.

As indicated in the previous Office Action, mailed 07/31/2006, these assertions have not been found convincing essentially for the reasons of record reiterated herein for applicant's convenience.

As indicated previously, the instant claims now recite limitations which were not clearly disclosed in the priority provisional application as well as the specification as-filed, and would have changed the scope of the priority application and do change the scope of the instant disclosure as-filed.

For example, it cannot be said that a subgenus is necessarily described by a genus encompassing it and a species upon which it reads. See In re Smith 173 USPQ 679, 683 (CCPA 1972) and MPEP 2163.05.

Therefore, applicant's reliance on generic methods to reduce T cell-mediated immune responses with PSGL-1-specific antibodies and certain limitations found in the Examples of the provisional application does not provide sufficient written description for the claimed limitations indicated previously and herein, as currently claimed.

As indicated previously, the filing date of the instant claims as they read on "methods of preventing or reducing a T cell-mediated immune responses in an individual, including the "selecting an individual diagnosed", "administering a compound ... induces a signal transduction pathway that results in the death of the T cell" (e.g. claim 1), "an agent that binds to the monoclonal antibody and induces the cross-linking of a plurality of PSGL-1 antigens on the surface of the T cell" (e.g. claim 4), detecting the number of T cells in a first biological sample (e.g. claims 13-14), "20% of peripheral blood CD3⁺ cells (e.g. claims 15-16) and "diabetes" (e.g. elected autoimmune disease) is deemed to be the filing date of the instant application USSN 10/051,497, filed 8/3/01, as the previous provisional priority application does not appear to provide sufficient written description for the claimed "limitations" indicated herein.

Here, with respect to the recitation of “detecting the number of T cells in a first biological sample”,

applicant relies upon Example 6 of the provisional application USSN 60/310,196, filed 08/03/2001 and likewise Example 6 of the instant application, USSN 10/051,497 to support the description above, via the administration of an anti-PSGL antibody TAB4 to experimental mice, measuring the percentage of CD3⁺ T cells in harvested spleen and peripheral blood and comparing these results with corresponding results from untreated mice.

Applicant continues to assert that this comparison of control and treated mice is tantamount to what is claimed in claim 13.

However, as pointed out previously, applicant is relying upon a limited experimental study measuring certain parameters under certain defined conditions, while the claims are broader in scope or breadth.

It is acknowledged that page 15, lines 14-20 of the provisional application USSN 60/310,196, filed 08/03/2001, provides written description for targeting “diabetes mellitus” with anti-TAIP compounds (i.e., anti-PSGL-1 compounds)

Although applicant disagrees with this analysis, applicant has not presented a convincing detailed analysis as to why the claimed subject matter has clear support in the parent application, other than to assert that the provisional application provides ample written description for each and every limitation as presented and citing certain passages of the provisional application without sufficiently pointing out written support for the “limitations” indicated previously and herein.

Again, applicant is invited to verify the priority date of the instant claims, including written support and enablement under 35 USC 112, first paragraph.

Again, if applicant disagrees, applicant should present a detailed analysis as to why the claimed subject matter has clear support in the parent application. Applicant is invited to verify the priority date of the instant claims, including written support and enablement under 35 USC 112, first paragraph.

4. This is a rejection under 35 USC § 112, first paragraph, "new matter".

Claims 4 and 20 are rejected under 35 U.S.C. § 112, first paragraph, as the specification does not contain a written description of the claimed invention, in that the disclosure does not reasonably convey to one skilled in the relevant art that the inventor(s) had possession of the claimed invention at the time the application was filed.

The specification as originally filed does not provide support for the invention as now claimed:

"an antibody that binds to the monoclonal antibody and induces the cross-linking of a plurality of PSGL-1 antigen on the surface of the T cell".

Applicant's arguments, filed 10/24/2007, have been fully considered but have not been found convincing essentially for the reasons of record.

Applicant's arguments and the examiner's rebuttal are essentially the same of record.

As indicated in the previous Office Actions, mailed 07/31/2006 and 04/19/2007; these assertions have not been found convincing essentially for the reasons of record reiterated herein for applicant's convenience.

Again, it appears that applicant continues to rely upon the disclosure of the anti-hamster Ig as a cross-linker antibody (e.g. see Example 3 on pages 19-20) to support an entire (sub)genus of "antibodies that bind to the monoclonal antibody and induces the cross-linking of a plurality of PSGL-1 antigen on the surface of the T cell".

In addition, applicant again points out that Example 10 discloses another antibody, namely cross-linker rabbit anti-mouse Ig that binds to the monoclonal antibody and induces cross-linking of a plurality of PSGL-1 antigens on the surface of T cells or NK cells.

Therefore, applicant asserts that two (2) examples of cross-linking antibody as claimed have been disclosed.

Applicant also relies upon the original claims which recite "administering an agent that binds to the monoclonal antibody and induces the cross-linking of a plurality of PSGL-1 antigens on the surface of the T cell or NK cell" to support the current claim recitation of "an antibody that binds to the monoclonal antibody and induces cross-linking of a plurality of PSGL-1 antigens on the surface of the T cell".

Applicant relies upon Lockwood v American Airlines, Inc., 107 F.3d, 1565 (Fed. Cir. 1997), Plfaff v. Wells Elecs., Inc., 525 U.S. 55, 68 (1998), Regents of the University of California v. Eli Lilly, 119 F.3d 1559 (Fed. Cir. 1997) and Vas-Cath Mahurkar, 935 F.2d 1555 (Fed. Cir. 1991) to indicate that the limitations can be / must be supported in the specification through express, implicit or inherent disclosure and to show that applicant had possession of the claimed invention. Also, see MPEP 2163.

Also, applicant has asserted previously that rather than providing a generic or sub-generic disclosure, applicant provides a disclosure of a particular species of the claimed genus of cross-linking antibodies.

Again, and consistent with applicant's arguments; applicant's reliance on a generic disclosure (e.g. agent) and limited species (e.g. anti-hamster Ig and rabbit anti-mouse Ig in Examples 3 and 10) does not provide sufficient direction and guidance to the generic "antibody that binds to the monoclonal antibody and induces the cross-linking of a plurality of PSGL-1 antigen on the surface of the T cell", as currently claimed.

It is noted that a generic or a sub-generic disclosure cannot support a species unless the species is specifically described. It cannot be said that a subgenus is necessarily described by a genus encompassing it and a species upon which it reads. See In re Smith 173 USPQ 679, 683 (CCPA 1972) and MPEP 2163.05.

Applicant relies upon the ordinary artisan recognizing the possession of a subgenus of two Examples of cross-linking antibodies based upon certain Examples in the specification as-filed rather than clear written description of the claimed "limitation" in the application as filed and currently claimed.

Applicant has not provided sufficient direction either in the instant application as filed or in the priority application for

"an antibody that binds to the monoclonal antibody and induces the cross-linking of a plurality of PSGL-1 antigen on the surface of the T cell" as currently claimed.

In addition, applicant further submits that it would be appreciated that the claimed genus of cross-linking antibodies includes any suitable anti-isotype antibody, examples of which are so numerous in the prior art.

However, applicant is relying upon in vitro Examples of testing antibodies to support in vivo treatment methods.

Obviousness is not the standard for the addition new limitations to the disclosure as filed.

It is noted that entitlement to a filing date does not extend to subject matter, which is not disclosed, but would be obvious over what is expressly disclosed.

See Lockwood v. American Airlines Inc., 41 USPQ2d 1961 (Fed. Cir. 1977).

In contradistinction to applicant's reliance upon certain legal decisions in conjunction with the Examples in the instant specification,

applicant's reliance upon the disclosure of the instant (and priority application) does not provide sufficient disclosure of a broad and complete disclosure coupled with extensive examples to fully support the current claimed recitation.

Again, the specification as filed does not provide a sufficient written description nor provide sufficient blaze marks nor direction for the instant methods encompassing the above-mentioned "limitation", as currently recited. The instant claims now recite limitations which were not clearly disclosed in the specification as-filed, and now change the scope of the instant disclosure as-filed. Such limitations recited in the present claims, which did not appear in the specification, as filed, introduce new concepts and violate the description requirement of the first paragraph of 35 U.S.C. 112.

Applicant's arguments have not been found persuasive.

Applicant is required to cancel the new matter in the response to this Office Action.

Alternatively, applicant is invited to provide sufficient written support for the "limitation" indicated above.

See MPEP 714.02 and 2163.06

5. With respect to the enablement rejection of record and that presented herein, applicant's arguments, filed 10/26/2007, have been fully considered but have not been found convincing essentially for the reasons of record and addressed herein.

Without conceding the validity of the enablement rejection of record, applicant submits that the claims have been amended to omit the phrase "antigen-binding fragments" to avoid the previous enablement rejection of record.

Again, given that the record, including the instant Examples, shows that cross-linking of PSGL-1 on cells appears to be required for the induction of apoptosis of activated T cells,

the enablement rejection of record is still deemed relevant to the current amended claims.

However, in addition to the enablement issues concerning the claimed methods *to induce apoptosis in T cells and NK cells with PSGL-1-specific antigen-binding fragments in the absence of administering secondary cross-linking agents / antibodies*; the following is added to the enablement rejection of record.

As an alternative to *administering secondary cross-linking agents / antibodies*, It appears that *administering multivalent anti-PSGL-1 antibodies, such as diabodies*, would be an alternative in obtaining cross-linking of PSGL-1 on activated T cells surfaces resulting in apoptosis of said activated T cells.

6. Claims 1, 3, 4, 6-9, 11-13, 17, 19, 20, 22-25 and 38 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention

In vitro and animal model studies have not correlated well with in vivo clinical trial results in patients. Since the therapeutic indices of immunosuppressive drugs or biopharmaceutical drugs can be species- and model-dependent, it is not clear that reliance on the in vitro and in vivo experimental observations as well as the clinical experience with targeting various inflammatory conditions with PSGL-1 specific antibodies accurately reflects the relative ability or efficacy of the claimed methods *to induce apoptosis in T cells and NK cells with PSGL-1-specific antigen-binding fragments in the absence of administering secondary cross-linking agents / antibodies or administering multivalent anti-PSGL-1 antibodies, such as diabodies*.

Pharmaceutical therapies in the absence of in vivo clinical data are unpredictable for the following reasons; (1) the protein may be inactivated before producing an effect, i.e. such as proteolytic degradation, immunological inactivation or due to an inherently short half-life of the protein; (2) the protein may not reach the target area because, i.e. the protein may not be able to cross the mucosa or the protein may be adsorbed by fluids, cells and tissues where the protein has no effect; and (3) other functional properties, known or unknown, may make the protein unsuitable for in vivo therapeutic use, i.e. such as adverse side effects prohibitive to the use of such treatment.

See page 1338, footnote 7 of Ex parte Aggarwal, 23 USPQ2d 1334 (PTO Bd. Pat App. & Inter. 1992).

This invention encompasses administering any "anti-PSGL-1 antibody" to induce apoptosis in T cells and NK cells in the absence of administering cross-linking agents / antibodies or in the absence of administering multivalent anti-PSGL-1 antibodies (e.g., diabodies).

Applicant has indicated that the claimed methods rely upon secondary cross-linking agents / antibodies to accomplish the claimed mode of action (i.e., apoptosis), whether or not the anti-PSGL-1 antibodies are administered even in the absence of cross-linking agents/antibodies or .
whether or not the anti-PSGL-1 antibodies are multivalent
(e.g., see page 13, lines 4-9 of Applicant's Remarks, filed 02/01/2007).

While applicant has acknowledged that Fc binding via Fc receptors *may* provide an additional mechanism of action that precludes the need for administering secondary cross-linking agents / antibodies,
such a mechanism of action relies upon the administration of anti-PSGL-1 antibodies that have the structural capacity to bind Fc receptors as well as the ability to cross-link PSGL-1 on the surface of activated T cells.

Further, the instant specification as-filed apparently provides limited direction and guidance as to appropriate secondary cross-linking agents / antibodies, namely "anti-hamster Ig" and "rabbit anti-mouse Ig" as "an antibody that bind to the monoclonal antibody and induces the cross-linking of a plurality of PSGL-1 antigens on the surface of cell",

Also, the specification as-filed does not appear to provide for multivalent anti-PSGL-1 antibodies as an alternative to adding secondary cross-linking agents / antibodies in order to induce PSGL-1 on activated T cells in order to induce apoptosis on said T cells.

However, applicant has not provided sufficient direction and guidance in the specification as filed as how to make and to use such cross-linking antibodies in the claimed methods, as generically claimed.

Again as applicant acknowledged, applicant appears to be relying upon the disclosure of the anti-hamster Ig or rabbit anti-mouse Ig as a cross-linker antibody (e.g. see Example 3 on pages 19-20 and Example 10 on pages 26-27) to support an entire genus of "antibodies that bind to an anti-PSGL-1 antibody".

In contrast to the in vitro assays under controlled conditions set forth in the instant Example,

the instant specification does not provide sufficient direction and guidance as to the nature of antibodies that can induce cross-linking in vivo, broadly encompassed by the claimed invention.

The instant specification as-filed does not appear to provide sufficient enablement for any "anti-PSGL-1 antibody" that can induce apoptosis of T cells and NK cells in order to reduce cell-mediated immune responses

*in the absence of administering secondary cross-linking agents / antibodies
or in the absence of multivalent anti-PSGL-1 antibodies.*

This invention encompasses any "anti-PSGL-1 antibody" to accomplish the claimed methods resulting in the induction of apoptosis of activated T cells (e.g. see Summary of the Invention, yet the instant specification does not provide sufficient direction and guidance as to the nature of antibodies that can induce apoptosis of activated T cells in the absence of cross-linking in vivo or in the absence of administering multivalent anti-PSGL-1 antibodies, broadly encompassed by the claimed invention.

While cross-linking antibodies in vivo may be accomplished by various antibody constructs, including multimeric antibodies, or whole antibodies that bind anti-PSGL antibodies that are not hamster antibodies,

the instant disclosure provides for insufficient guidance and direction towards the relevant, identifying characteristics of the "anti-PSGL-1 antibody that can induce apoptosis" in the absence of cross-linking via secondary agents / antibodies or by administering multivalent anti-PSGL-1 antibodies".

Reasonable correlation must exist between the scope of the claims and scope of enablement set forth. The specification does not describe nor enable any "anti-PSGL-1 antibody" that can induce apoptosis in the absence of secondary cross-linking agents / antibodies or in the absence of administering multivalent anti-PSGL-1 antibodies.

Without sufficient guidance, making and using any "anti-PSGL-1 antibody" to induce apoptosis of activated T cells in the absence of administering the appropriate secondary cross-linking agent / antibody" or the use of multivalent anti-PSGL-1 antibodies in the claimed methods would have been unpredictable and the experimentation left to those skilled in the art is unnecessarily, and improperly, extensive and undue.

Applicant's arguments have not been found persuasive.

7. Upon reconsideration of applicant's amended claims filed 10/26/2007, particularly the inclusion of the "selecting step",

the previous rejection under 35 U.S.C. § 102(b) as being anticipated by Larsen et al. (U.S. Patent No. 5,840,679) (see entire document) essentially for the reasons of record and in further evidence of Chen et al. (Blood 104: 3233-3242, 2004) has been withdrawn.

8. Upon reconsideration of applicant's amended claims filed 10/26/2007, particularly the inclusion of the "selecting step",

the previous rejection under 35 U.S.C. § 102(e) as being anticipated by Lazarovits et al. (US 2004/0002450 A1) and as further evidenced by the Lin 132 Declaration, filed 02/01/2007 has been withdrawn.

9. Upon reconsideration of applicant's amended claims filed 10/26/2007, particularly the inclusion of the "selecting step",

the previous rejection under 35 U.S.C. § 103(a) as being unpatentable over by Larsen et al. (U.S. Patent No. 5,840,679) in view of Trembleau et al. (J. Immunol. 163 : 2960 – 2968, 1999), Yago et al. (J. Immunol. 161 : 1140 –1145 (1998), Hirata et al. (J. Exp. Med. 192: 1669 – 1675, 2000) and Cobbold et al. (U.S. Patent No. 6,056,956)

and as further evidenced by Chen et al. (Blood 104: 3233-3242, 2004) has been withdrawn.

10. Upon reconsideration of applicant's amended claims filed 10/26/2007, particularly the inclusion of the "selecting step",

the previous rejection under 35 U.S.C. § 103(a) as being unpatentable over by Larsen et al. (U.S. Patent No. 5,840,679) in view of Trembleau et al. (J. Immunol. 163: 2960 – 2968, 1999), Yago et al. (J. Immunol. 161 : 1140 –1145 (1998), Hirata et al. (J. Exp. Med. 192: 1669 – 1675, 2000) and Cobbold et al. (U.S. Patent No. 6,056,956)

and as further evidenced by Chen et al. (Blood 104: 3233-3242, 2004) essentially for the reasons of record.

and further in view of Snapp et al. (Blood 91: 154-164, 1998) (1449; #AS) AND/OR Lazarovits et al. (US 2004/0002450 A1) (see entire document)

and as further evidenced by the Lin 132 Declaration, filed 02/01/2007 has been withdrawn.

11. Claims 1, 3, 4, 6, 11-13, 17, 19, 20, 22-25 and 38 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, 8, 9, 12-15, 19-22, 23, 26, 30, 31, 34-38 of copending application USSN 10/662,906. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are drawn to the same or nearly the same methods of preventing or reducing T cell-mediated immune responses with the same nearly the same PSGL-1-specific antibodies. Therefore, the copending claims either anticipate or render obvious one another.

It is noted that the copending claims recite a "multimeric compound that binds at least two PSGL-1 proteins". Given that the copending claims also recite "anti-PSGL-1 antibodies" and that antibodies have two binding sites, the copending claims appear to read on the instant claims drawn to the essentially the same methods relying upon PSGL-1 antibodies.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1, 3, 4, 6, 11-13, 17, 19, 20, 22, 23, 24 and 25 are directed to an invention not patentably distinct from claims 1, 4, 8, 9, 12-15, 19-22, 23, 26, 30, 31, 34-38 of commonly assigned USSN 10/662,906 for the reasons set forth above.

The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP § 2302). Commonly assigned USSN 10/662,906, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(e), (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee can, under 35 U.S.C. 103(c) and 37 CFR 1.78(c), either show that the conflicting inventions were commonly owned at the time the invention in this application was made, or name the prior inventor of the conflicting subject matter.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications pending on or after December 10, 2004.

Applicant's amendment, filed 10/24/2007 acknowledged the obvious double patenting rejection, but requests it to be held in abeyance until such time as the present or copending application issues into a patent.

12. No claim allowed.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip Gambel whose telephone number is (571) 272-0844. The examiner can normally be reached Monday through Thursday from 7:30 am to 6:00 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen O'Hara can be reached on (571) 272-0878.

The fax number for the organization where this application or proceeding is assigned is 571-272-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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January 22, 2008